

IRVIN RIGSBY PLC
ATTORNEYS AT LAW

LEXINGTON OFFICE
228 East High Street
P.O. Box 34106
Lexington, KY 40588-4106
T: (859) 233-4633 F: (859) 233-4642

NICHOLASVILLE OFFICE
110 North Main Street
Nicholasville, KY 40356
T: (859) 887-1200 F: (859) 885-2307

CATHERINE S. WRIGHT
cwright@irvinrigsby.com
Direct Dial: (859) 724-4104

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November 5, 2020

ENTERED
Office of Proceedings
November 5, 2020
Part of
Public Record

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S. W.
Washington, D.C. 20024

RE: Finance Docket No. 36429; R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC – Change Operators, Lease and Operation Exemption – Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corporation

Dear Ms. Brown:

R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC (“LS”) hereby replies to the letter filed by Reading Blue Mountain and Northern Railroad (“RBMN”) in the above referenced proceeding, on November 4, 2020 and served on LS on November 5, 2020. RBMN’s request to involve the Board in a purely contract issue should be rejected.

Relevant Background

RBMN’s attorney contacted LS on Friday, October 23, 2020, stating specifically “that RBMN would like to enter into an agreement that would continue the reciprocal use as set forth in the 1994 agreement” and that if this was not possible, RBMN would involve the STB. The following Monday, LS responded to RBMN’s attorney stating that it was agreeable to maintaining the status quo as set forth in the 1994 Agreement and requested that RBMN circulate a new agreement consistent with the 1994 Agreement for its review. Instead of circulating an agreement that maintained the status quo as requested by LS, RBMN presented an agreement to LS last Wednesday that materially changed the termination provision. The 1994 Agreement provided in relevant part:

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It is the intent of the parties that this Agreement continue in full force and effect until terminated by either party upon thirty (30) days' written notice to the other party. However, in the event, and on the date, LS ceases to be the contractor operator for the Authority, this Letter Agreement shall automatically terminate.

In contrast, RBMN proposed a termination clause as follows:

It is the intent of the parties that this Agreement continue in full force and effect for so long as one or both of the parties have need for use of the Wye. This Letter Agreement shall have an initial term of twenty (20) years. Thereafter, the term of this Agreement shall automatically renew for successive ten (10) year terms. Any Party objecting to a renewal term must provide the other Party written notice of its intent not to renew for good cause shown, such notice to describe such good cause in reasonable detail, by means of written notice to the other Party at least ninety (90) days in advance of the end of the then existing term. Unless the other Party consents to the non-renewal of a term, the matter will go to binding arbitration and the arbiter will be bound by the intent of this Letter Agreement that it continue in full force and effect for so long as one or both of the parties have need for use of the Wye.

(Emphasis added). Rather than maintaining the status quo continuing the terms of the 1994 Agreement, RBMN seeks to materially change the terms of the 1994 Agreement. Certainly, LS cannot agree to a term that exceeds LS's rights under the underlying lease agreement, as amended; nor is LS willing to agree to an agreement that does not allow for termination under any circumstances while LS is the operator, particularly before LS has even received approval to begin operations.

LS readily agreed last week to enter into an agreement with RBMN that would maintain the status quo and allow RBMN the reciprocal use that it seeks. LS further specifically stated that it would consider a longer notice of termination period, such as 60 days, as a compromise. Because of this, RBMN is not at risk of losing access to the portion of the track at issue in the 1994 Agreement. RBMN is involving the STB in a contract dispute, in order to obtain an advantage in its contract dispute.

Argument

RBMN does not dispute the facts set forth in LS Notice of Exemption, as amended, or suggest that LS has not complied with the requirements for the exemption. Instead, RBMN raises a contract issue relating to its attempt to renegotiate a 1994 Agreement with LS that is currently in effect with the current operator of the line. Negotiations between RBMN and LS have not "stalled" as represented by RBMN; rather, RBMN decided to involve the Board in the negotiations, in the hope that the Board would set the conditions RBMN wants.

Respectfully, such a contract dispute is not a matter for the Board. *See Wisconsin Central Ltd. – Trackage Rights Exemption – Lines of Union Pacific Railroad Company and*

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Illinois Central Railroad Company, Finance Docket No. 53992 (March 4, 2016)(granting exemption over objection, noting “this is a contract dispute”); *Lackawanna County Railroad Authority – Acquisition Exemption – F&L Realty, Inc.*, Finance Docket No. 33905, *4 (October 22, 2001)(“The parties want us to interpret various agreements that have been entered into the record....The interpretation of these agreements, however, lies within the purview of the courts, not with us.”)

LS respectfully requests that RBMN’s request that the STB condition the grant of exemption on RBMN and LS’s agreement to reciprocal use of the Wye Track for as long as both parties have use of the track or until the termination of LS’s lease of the track be denied as without merit.

Please contact me if you have any questions regarding this filing.

Sincerely,



Catherine S. Wright
*Attorney for R. J. Corman Railroad
Company/Luzerne & Susquehanna Line,
LLC*

cc: Lawrence J. Moran, Counsel for RBMN